

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FRANCES A. BRYANT,

CIVIL CASE NO.: 04-40127

Plaintiff,

v.

CONTINENTAL CASUALTY
COMPANY, et al.,

HONORABLE PAUL V. GADOLA
U.S. DISTRICT JUDGE

Defendants.

_____ /

ORDER ACCEPTING REPORT AND RECOMMENDATION

This is an Employee Retirement Income Security Act (“ERISA”) cause of action, 29 U.S.C. § 1001, *et seq.*, arising out of Defendants’ denial of Plaintiff’s long term disability benefits. Before the Court is Plaintiff’s Motion for Judgment on the Administrative Record, for Summary Judgment and/or to Permit Limited Discovery [docket entry #26], Defendants’ Motion for Judgment on the Merits [docket entry #27], and Magistrate Judge R. Steven Whalen’s August 31, 2006 Report and Recommendation [docket entry #38] regarding the two motions. The magistrate judge’s report and recommendation recommended that Defendants’ motion for summary judgment be denied and that Plaintiff’s motion for summary judgment be granted, but only to the extent that the case is remanded for further administrative review.

Magistrate Judge Whalen notified the parties that any objections must be filed within ten days of service. Each party filed objections to the report and recommendation and each filed a response to the opposing party’s objections.

The Court’s standard of review for a magistrate judge’s report and recommendation depends

upon whether a party files objections. If a party does not object to the report and recommendation, the Court does not need to conduct a review by any standard. *See Lardie v. Birkett*, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002) (Gadola, J.). If a party does object to portions of the report and recommendation, the Court reviews those portions *de novo*. *Lardie*, 221 F. Supp. 2d at 807. The Federal Rules of Civil Procedure dictate this standard of review in Rule 72(b), which states, in relevant part:

The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, or any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Fed. R. Civ. P. 72(b).

Here, because each party filed objections, this Court reviews *de novo* those portions to which an objection has been made. *See Lardie*, 221 F. Supp. 2d. at 807. *De novo* review in these circumstances requires at least a review of the evidence before the Magistrate Judge; the Court may not act solely on the basis of a magistrate judge's report and recommendation. *See* 12 Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 3070.2 (1997); *see also Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court may supplement the record by entertaining additional evidence, but is not required to do so. 12 Wright, Federal Practice § 3070.2. After reviewing the evidence, the Court is free to accept, reject, or modify the findings or recommendations of the Magistrate Judge. *See Lardie*, 221 F. Supp. 2d at 807. If the Court accepts a report and recommendation, the Court is not required to state with specificity what it reviewed;

it is sufficient for the Court to state that it engaged in a *de novo* review of the record and adopts the report and recommendation. *See id*; 12 Wright, Federal Practice § 3070.2.

Therefore, in accordance with the requisite *de novo* review, the Court has reviewed the claims and filings that were before Magistrate Judge Whalen. After such a review, the Court assigns no error to the report and recommendation. Magistrate Judge Whalen correctly set forth the legal standard necessary for a federal court reviewing a decision to deny benefits, *see McDonald v. Western-Southern Life Ins. Co.*, 347 F.3d 161, 168-69 (6th Cir. 2003), found that the reviewing doctor assessed Plaintiff's sedentary restrictions upon her pulmonary condition rather than upon her diagnosed condition of systemic lupus erythematosus, determined that the Administrator ignored evidence relating to Plaintiff's debilitating conditions other than her pulmonary symptoms, and concluded that "Defendant should be allowed the opportunity, if possible, to fully take into account these conditions in making a proper and undistorted review of the record." Report and Recommendation, p. 14 (Aug. 31, 2006) (citing *Univ. Hosp. of Cleveland v. Emerson Elec. Co.*, 202 F.3d 839, 852 (6th Cir. 2000)). Furthermore, the Court agrees that a determination of Plaintiff's claim as to reinstatement and waiver of premiums on her individual policy is necessarily intertwined with the disability determination, therefore, that too must be remanded for further fact-finding.

ACCORDINGLY, IT IS HEREBY ORDERED that the Report and Recommendation [docket entry #38] is **ACCEPTED** and **ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED that Defendants' Motion for Judgment on the Merits [docket entry #27] is **DENIED** and Plaintiff's Motion for Judgment on the Administrative Record, for Summary Judgment and/or to Permit Limited Discovery [docket entry # 26] is **GRANTED IN**

PART, limited to the extent that the case is **REMANDED** for further administrative review.

SO ORDERED.

Dated: March 30, 2007

s/Paul V. Gadola
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on April 2, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Philip F. Brown; Charles Gottlieb, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: _____.

s/Ruth A. Brissaud
Ruth A. Brissaud, Case Manager
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